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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 BRENDA B.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

CASE NO. C20-5687-MAT

ORDER RE: SOCIAL SECURITY
DISABILITY APPEAL

13 Plaintiff proceeds through counsel in her appeal of a final decision of the Commissioner of
14 the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's
15 application for Disability Insurance Benefits (DIB), and Supplemental Security Income (SSI) after
16 a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the
17 administrative record (AR), and all memoranda of record, this matter is AFFIRMED.

18 **FACTS AND PROCEDURAL HISTORY**

19 Plaintiff was born on XXXX, 1968,¹ has a high school education, and previously worked
20 as a school cafeteria cook, stock clerk, housekeeper, and cashier II. (AR 27-28.) Plaintiff applied
21 for DIB and SSI on September 13, 2017. (AR 17.) That application was denied initially and upon
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¹ Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 reconsideration, and Plaintiff timely requested a hearing. (*Id.*) On January 29, 2019, ALJ Rebecca
2 L. Jones held a hearing, taking testimony from Plaintiff and a vocational expert. (AR 38-92.) On
3 April 18, 2019, the ALJ issued a decision finding Plaintiff not disabled. (AR 14-37.) Plaintiff
4 timely appealed. The Appeals Council denied Plaintiff's request for review (AR 1-6), making the
5 ALJ's decision the final decision of the Commissioner. Plaintiff now seeks judicial review.

6 **JURISDICTION**

7 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

8 **DISCUSSION**

9 The Commissioner follows a five-step sequential evaluation process for determining
10 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must
11 be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not
12 engaged in substantial gainful activity since May 1, 2017, the amended alleged onset date. (AR
13 19.) At step two, it must be determined whether a claimant suffers from a severe impairment. The
14 ALJ found severe Plaintiff's bilateral plantar fasciitis, migraine headaches, tendinitis of the left
15 elbow, degenerative disc disease of the lumbar spine with radiculopathy, and peroneus
16 tendinopathy of the lower right extremity. (*Id.*) Step three asks whether a claimant's impairments
17 meet or equal a listed impairment. The ALJ found that Plaintiff's impairments did not meet or
18 equal the criteria of a listed impairment. (AR 21.)

19 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess
20 residual functional capacity (RFC) and determine at step four whether the claimant has
21 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of
22 performing light work subject to additional limitations: Plaintiff is "able to perform work that does
23 not require climbing ladders, ropes, or scaffolds"; "able to occasionally climb ramps and stairs and

1 occasionally stoop, kneel, crouch and crawl”; “able to perform work that allows her to avoid
2 exposure to extreme cold, vibration, fumes, odors, dusts, gasses and hazards”; “able to perform
3 simple routine tasks”; and “would require a sit stand option defined as the ability to change position
4 after 30 to 60 minutes for 3 to 5 minutes while remaining on task.” (AR 22.) With that assessment,
5 the ALJ found Plaintiff unable to perform any past relevant work.

6 Proceeding to step five and with the assistance of the VE, the ALJ found Plaintiff capable
7 of performing jobs existing in significant numbers in the national economy, specifically,
8 production line solderer, electrical accessories assembler, and wire worker. (AR 29.) The ALJ
9 concluded Plaintiff was not disabled from May 1, 2017, through the date of the decision. (*Id.*)

10 This Court’s review of the ALJ’s decision is limited to whether the decision is in
11 accordance with the law and the findings supported by substantial evidence in the record as a
12 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more
13 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable
14 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750
15 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ’s
16 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
17 2002).

18 Plaintiff argues the ALJ erred in discounting the opinions of two examining doctors and
19 Plaintiff’s testimony. As relief, Plaintiff requests remand for further proceedings before a different
20 ALJ. The Commissioner argues the ALJ’s decision is free of legal error, supported by substantial
21 evidence, and should be affirmed.

22 Medical Opinion Evidence

23 Because Plaintiff applied for benefits after March 27, 2017, new regulations apply to the

1 ALJ's evaluation of medical opinion evidence. Under the regulations, an ALJ "will not defer or
2 give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or
3 prior administrative medical finding(s)[.]" 20 C.F.R. §§ 404.1520c(a), 416.920c(a).² The ALJ
4 must articulate and explain the persuasiveness of an opinion or prior finding based on
5 "supportability" and "consistency," the two most important factors in the evaluation. *Id.* at (a),
6 (b)(1)-(2). The "more relevant the objective medical evidence and supporting explanations
7 presented" and the "more consistent" with evidence from other sources, the more persuasive a
8 medical opinion or prior finding. *Id.* at (c)(1)-(2). The ALJ may but is not required to explain how
9 other factors were considered, as appropriate, including relationship with the claimant (length,
10 purpose, and extent of treatment relationship; frequency of examination); whether there is an
11 examining relationship; specialization; and other factors, such as familiarity with other evidence
12 in the claim file or understanding of the Social Security disability program's policies and
13 evidentiary requirements. *Id.* at (b)(2), (c)(3)-(5). *But see id.* at (b)(3) (where finding two or more
14 opinions/findings about same issue equally supported and consistent with the record, but not
15 exactly the same, ALJ will articulate how other factors were considered). Where a single medical
16 source provides multiple opinions or findings, the ALJ conducts a single analysis and need not
17 articulate how each opinion or finding is considered individually. *Id.* at (b)(1).

18 A. Lynn Staker, M.D.

19 Dr. Staker examined Plaintiff on August 4, 2017, and opined Plaintiff has "limitations in
20 her ability to do any prolonged walking, standing, or heavy-duty activity and most likely would be

21 ² "A prior administrative medical finding is a finding, other than the ultimate determination about
22 [disability], about a medical issue made by our Federal and State agency medical and psychological
23 consultants at a prior level of review ... in [a] claim based on their review of the evidence in your case
record[.]" 20 C.F.R. §§ 404.1513(a)(5), 416.913(a)(5).

1 at a sedentary level” (AR 509). Dr. Staker specifically opined the limitations would last for six
2 months. (AR 506.)

3 The ALJ noted Dr. Staker’s opinion that the limitations would last for six months (AR
4 506), short of the 12 month durational requirement. (AR 26.) found Dr. Staker’s opinion not
5 persuasive. The ALJ further found Dr. Staker’s opinion not persuasive because it was not
6 consistent with the longitudinal record, referencing generally a summary of Plaintiff’s medical
7 history earlier in the Decision. (AR 26.) The ALJ noted that Dr. Staker did not have the benefit
8 of imaging studies, “which would likely have benefited [Dr. Staker’s] assessment of the severity
9 of the claimant’s alleged symptoms.” (*Id.*)

10 Plaintiff disputes the ALJ’s finding that Dr. Staker’s opinion was not persuasive. Plaintiff
11 argues that despite Dr. Staker’s opinion that limitations would last for six months, Dr. Enkema
12 also opined ten months later that the limitations would last for six months. Plaintiff also contends
13 other medical opinion evidence is supportive of Dr. Staker’s opinion. (Dkt. 16 at 7, 9.)

14 Plaintiff fails to show the ALJ’s assessment of Dr. Staker’s opinion lacks substantial
15 evidence. A plain reading of the questionnaire completed by Dr. Staker shows the doctor estimated
16 the enumerated limitations to persist for six months. (AR 506.) The ALJ reasonably considered
17 Dr. Staker’s lack of access to imaging studies in evaluating the weight given to the opinion.
18 Indeed, Dr. Staker’s written note on the questionnaire suggesting a follow-up with Plaintiff’s
19 “spine surgeon” suggests the doctor acknowledged the need for further evaluation of Plaintiff’s
20 condition. (*Id.*) Further, in support of the ALJ’s finding that Dr. Staker’s opinion was further
21 unsupported by the longitudinal medical evidence of record (AR 26), the Defendant notes that the
22 only other opinions of record imposing limitations longer than six months found Plaintiff capable
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1 of performing light duty work. (Dkt. 17 at 8, citing AR 103-105, 116-118, 154-55.) The ALJ did
2 not err in considering the opinion of Dr. Staker.

3 B. Louis Enkema, M.D.

4 Dr. Enkema examined Plaintiff on June 11, 2018, and “opined that the claimant could
5 perform work at the sedentary level and that the current limitations on work activities would persist
6 for only six months with available treatment.” (AR 817-821.) The ALJ found the opinion
7 inconsistent with the more extensive neurological examinations conducted by Dr. McVey and Dr.
8 Kraus, the latter stating Plaintiff’s exam to be “perfectly normal”. (AR 25-26, 986.) Substantial
9 evidence supports the ALJ’s assessment of Dr. Enkema’s opinion.

10 Plaintiff’s Testimony

11 The ALJ considered Plaintiff’s statements concerning the intensity, persistence and
12 limiting effects of her subjective symptoms, finding them not entirely consistent with the medical
13 and other record evidence. (AR 23.) The rejection of a claimant’s subjective symptom testimony³
14 requires the provision of specific, clear, and convincing reasons. *Burrell v. Colvin*, 775 F.3d 1133,
15 1136-37 (9th Cir. 2014) (citing *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012)). *See also*
16 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007). “General findings are insufficient;
17 rather, the ALJ must identify what testimony is not credible and what evidence undermines the
18 claimant’s complaints.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996).

19 The ALJ correctly found plaintiff’s subjective testimony about her severity of her
20 limitations unsupported by the objective medical evidence. “While subjective pain testimony

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22 ³ Effective March 28, 2016, the Social Security Administration (SSA) eliminated the term
23 “credibility” from its policy and clarified the evaluation of a claimant’s subjective symptoms is not an
examination of character. SSR 16-3p. The Court continues to cite to relevant case law utilizing the term
credibility.

1 cannot be rejected on the sole ground that it is not fully corroborated by objective medical
2 evidence, the medical evidence is still a relevant factor in determining the severity of the claimant's
3 pain and its disabling effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); SSR 16-
4 3p. An ALJ therefore properly considers whether the medical evidence supports or is consistent
5 with a claimant's allegations. *Id.*; 20 C.F.R. §§ 404.1529(c)(4), 416.1529(c)(4) (symptoms are
6 determined to diminish capacity for basic work activities only to the extent the alleged functional
7 limitations and restrictions “can reasonably be accepted as consistent with the objective medical
8 evidence and other evidence.”) An ALJ may reject subjective testimony upon finding it
9 contradicted by or inconsistent with the medical record. *Carmickle v. Comm’r of SSA*, 533 F.3d
10 1155, 1161 (9th Cir. 2008); *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). *Carmickle*
11 *v. Comm’r of SSA*, 533 F.3d 1155, 1161 (9th Cir. 2008) (“Contradiction with the medical record is
12 a sufficient basis for rejecting the claimant's subjective testimony.”) Although Plaintiff reported
13 she could barely walk half a block without having to sit down for a few minutes to an hour, had
14 trouble putting on her own shirt and changing the sheets on her bed, could lift nothing heavier than
15 a jug of milk, and lies down or reclines most of the day (AR 23), the ALJ noted Plaintiff's treatment
16 history showed improvement in her pain complaints with treatment including injections, bracing,
17 physical therapy, an elbow sling, prefabricated insoles, stab phlebectomy and compression
18 stockings. (AR 25.) Dr. McVey found Plaintiff's “multiple neurological complaints” unexplained
19 by any neurological disorder. Dr. Kraus found Plaintiff's exam “perfectly normal”, and no
20 compatible history of true weakness. Examination findings, nerve conduction studies, and imaging
21 did not corroborate Plaintiff's complaints of weakness. (*Id.*)

22 The ALJ also found Plaintiff's activities inconsistent with her testimony about her
23 limitations. Plaintiff lived alone and was able to prepare her own simple meals, do laundry, shop,

1 go out alone, take her dog out, and do light cleaning, as well as engage in hobbies. (AR 26.)
2 Activities that contradict the Plaintiff's testimony about her functional capacity may be considered
3 by the ALJ. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007). The ALJ reasonably concluded that
4 Plaintiff's self-described daily activities were inconsistent with the more extreme limitations
5 described by her subjective testimony.

6 **CONCLUSION**

7 For the foregoing reasons, this matter is AFFIRMED.

8 DATED this 11th day of May, 2021.

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11 MARY ALICE THEILER
12 United States Magistrate Judge
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